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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,203	12/19/2001	Richard Louis Underhill	KCC-16,198	4876

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PAULEY PETERSEN KINNE & ERICKSON
2800 WEST HIGGINS ROAD
SUITE 365
HOFFMAN ESTATES, IL 60195

EXAMINER	
RUHL, DENNIS WILLIAM	

ART UNIT	PAPER NUMBER
3737	5

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K

Office Action Summary	Application No.	Applicant(s)	
	10/025,203	UNDERHILL ET AL.	
	Examiner	Art Unit	
	Dennis Ruhl	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. With respect to the IDS of 3/21/02, reference 0454105B1 has not been considered because no translation or statement of relevancy has been provided. The examiner also notes that reference 0661031A2 was submitted with only the claims page, so the reference has only been considered to the extent of what was disclosed. The majority of the specification is missing and only the figures and claims page was submitted.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9,18, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of the terms "unisex pant-like garment" and "gender specific pant-like" is not known. The definitions found in the specification are themselves indefinite because one wishing to avoid infringement would not know what constitutes a unisex type of garment as opposed to a gender specific type of garment. The scope of these terms is considered to be indefinite.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-8,10-17,19-35, are rejected under 35 U.S.C. 103(a) as being unpatentable over Dragoo et al. (6229061).

With respect to claims 1,3,8,12,21,22,24, Dragoo discloses a package that contains different types of absorbent articles. Dragoo discloses the step of providing a series of at least 3 types of pant like garments (see column 12, line 54 to column 13, line 6). Absorbent articles are worn like pants so the limitation of "pant-like" is satisfied by Dragoo. Dragoo does not specifically disclose conveying information to a consumer describing signals displayed by a child that indicate greater applicability of one type over another. It would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about what type of absorbent article to use depending on the child and the signals displayed by the child (how much you child urinates is a signal and will indicate the need for a specific absorbency range for the absorbent) so that the consumer will know what type of absorbent article to use. Since the package includes differently types of absorbent articles it is considered obvious to

inform the consumer about what is inside the package so they can successfully use the articles. It makes not sense at all to sell different types of absorbent articles to the consumer without giving the consumer guidance as to what conditions will require what specific article.

With respect to claims 1,2,12,13,14,15,17,21,26,27, (a different interpretation from that of claim 1 immediately above), Dragoo discloses packaging of different types of absorbent articles. It is well known in the world that diapers such as disclosed by Dragoo are sold in many different sizes, such as for premature babies, normal (average) sized babies, older babies (older than one year old) as well as for toddlers (2-4 years old). The recited step of providing a series of least 3 types of absorbent articles is satisfied by the fact that it is well known and obvious to one of ordinary skill in the art at the time the invention was made to sell absorbent articles in different size ranges so the consumer can have a product that fits correctly. The recited step of conveying information describing signals displayed by a child that indicate greater applicability of one type over another is satisfied by the fact that it s well known and obvious to one of ordinary skill in the art at the time the invention was made to provide sizing information on packages of absorbent articles so the consumer can purchase the correct size for their child. The size of your child is a signal that will indicate what size of absorbent article they require.

With respect to claims 4-6,16,23,25, Dragoo discloses and recognizes that the absorbency of each absorbent article can be different, so reciting a specific absorbency range for each article is considered to be obvious to one of ordinary skill in the art. It is

not considered novel to simply pick various absorbency values or ranges when taking into account that Dragoo already recognizes that the absorbent articles may have different absorbencies, so reciting specific absorbencies is considered obvious.

With respect to claim 7, the recited 3 different sizes are considered to be the multiple inserts with different absorbent capacities and the different absorbent articles with different absorbent capacities. The disclosure of Dragoo satisfies the claimed limitation.

With respect to claims 10,11,19,20, it is old and well known in the art and obvious to one of ordinary skill in the art at the time the invention was made to provide absorbent articles with wetness indicators so that the caregiver can be alerted when the absorbent articles is about to fail to prevent unwanted leakage from the absorbent article, with the choice of what kind of wetness indicator being one of design choice.

For claim 28-35, and following the interpretation and statement of rejection set forth for claims 1 and 3, It is well known in the world that diapers such as disclosed by Dragoo are sold in many different sizes, such as for premature babies, normal (average) sized babies, older babies (older than one year old) as well as for toddlers (2-4 years old). The recited step of providing a series of least 3 types of absorbent articles is satisfied by the fact that it is well known and obvious to one of ordinary skill in the art at the time the invention was made to sell absorbent articles in different size ranges so the consumer can have a product that fits correctly. Dragoo discloses and recognizes that the absorbency of each absorbent article can be different, so reciting a specific absorbency range for each article is considered to be obvious to one of ordinary skill in

the art. It is not considered novel to simply pick various absorbency values or ranges when taking into account that Dragoo already recognizes that the absorbent articles may have different absorbencies, so reciting specific absorbencies is considered obvious.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brisebois et al. (6454095), and Bauer et al. (6079562) disclose packaging of absorbent articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR

DENNIS RUHL
PRIMARY EXAMINER